

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

---

UNITED STATES OF AMERICA,

Plaintiff,

Criminal Action  
No. 21-mj-2049-MBB

v.

February 4, 2021

DAVID GENTILE,

Defendant.

Pages 1 to 21

---

TRANSCRIPT OF INITIAL APPEARANCE  
HELD VIA ZOOM VIDEOCONFERENCE  
BEFORE THE HONORABLE MARIANNE B. BOWLER  
UNITED STATES DISTRICT COURT

JOAN M. DALY, RMR, CRR  
Official Court Reporter  
John J. Moakley U.S. Courthouse  
One Courthouse Way, Room 5507  
Boston, Massachusetts 02210  
joanmdaly62@gmail.com

1 APPEARANCES:

2 FOR THE GOVERNMENT:

3 AMANDA BECK  
4 Assistant U.S. Attorney  
5 U.S. Attorney's Office  
6 John J. Moakley Courthouse  
7 Suite 9200  
8 One Courthouse Way  
9 Boston, Massachusetts 02210  
617.748.3144  
amanda.beck@usdoj.gov

10 FOR THE DEFENDANT:

11 MATTHEW MENCHEL, ESQUIRE  
12 Kobre & Kim LLP  
13 2 South Biscayne Boulevard  
35th Floor  
Miami, FL 33131  
305-967-6100  
Email: Matthew.menchel@kobrekim.com

14 DANIEL J. SAVAL, ESQUIRE  
15 Brown Rudnick LLP  
16 One Financial Center  
Boston, MA 02111  
617-856-8144  
Email: Daniel.savall@kobrekim.com

17 WILLIAM F. MCGOVERN, ESQUIRE  
18 Kobre & Kim LLP  
19 800 3rd Avenue  
20 New York, NY 10002  
21 212 488 1200  
22 Email: William.mcgovern@kobrekim.com  
23  
24  
25

P R O C E E D I N G S

(The following proceedings were held via Zoom Videoconference before the Honorable Marianne B. Bowler, United States Magistrate Judge, United States District Court, District of Massachusetts, on February 4, 2021.

The defendant, David Gentile, is present with counsel. The Assistant U.S. Attorney is present.)

THE COURT: I think we have everyone now. I see Mr. Saval.

THE CLERK: United States District Court for the District of Massachusetts is in session. The Honorable Marianne B. Bowler presiding. Today is February 4, 2021, in the matter of the United States versus Gentile, Magistrate Judge Action 21-2049, which will now be heard.

As a reminder to everyone on the video, please note photography, recording and/or rebroadcasting of the proceeding is prohibited, and doing so may result in sanctions as deemed appropriate or necessary by the Court.

So with that would counsel please identify themselves for the record beginning with the government.

MS. BECK: Good afternoon, Your Honor. Amanda Beck for the United States.

THE COURT: Thank you.

MR. MENCHEL: Your Honor, since we have not been formally admitted yet, do you want Mr. Saval to do the notice

1 of appearance?

2 THE COURT: I do.

3 MR. SAVAL: Good afternoon, Your Honor. Daniel  
4 Saval from Kobre & Kim on behalf of the defendant. I'm here  
5 with my partners Matthew Menchel and William McGovern who I  
6 have moved for the admission pro hac vice before this Court.  
7 I am a member of Massachusetts Bar and also admitted to the  
8 District Court.

9 THE COURT: Thank you very much. Good afternoon,  
10 Mr. Gentile. I'm Magistrate Judge Bowler. Can you see me  
11 and can you hear me?

12 THE DEFENDANT: I can.

13 THE COURT: This is your initial appearance in  
14 federal court. You're appearing today via video link. Let  
15 me begin by describing the arrangements that have been set up  
16 for this hearing. Your lawyers, the prosecutor, the  
17 courtroom deputy, the court reporter, the probation officer,  
18 and the Court are all in different locations today.

19 If you have any trouble with the video or audio  
20 connection, that is, if you cannot see or hear what's  
21 happening, please speak up immediately or wave your hand. Do  
22 you understand?

23 THE DEFENDANT: I do.

24 THE COURT: We'll stop the proceeding immediately  
25 and correct the technical problem. And if you want anything

1 repeated, just let me know and I will arrange for it. Just  
2 let me know. Do you understand?

3 THE DEFENDANT: I do.

4 THE COURT: If you need to speak with your  
5 attorneys at any time during this proceeding, just speak up  
6 or raise your hand and let me know, and I will arrange for  
7 you to speak with them privately. Do you understand?

8 THE DEFENDANT: I do.

9 THE COURT: I also want you to know that the court  
10 reporter is making a record of this proceeding, and if we  
11 need a transcript, it can be prepared. I want to explain  
12 something to you about why you are appearing by video link  
13 for this hearing.

14 You have the right to be physically present in open  
15 court for this hearing, but you can waive that right. Before  
16 I ask you whether or not you intend to waive your right to be  
17 physically present, you should know the following: Our  
18 normal procedure until ten months ago was to have all  
19 defendants present in the courtroom for this type of hearing.  
20 Today is February 4, 2021.

21 As I am sure you are all aware, we are in the midst  
22 of a pandemic caused by the coronavirus. In recent months  
23 federal and state authorities have declared states of  
24 emergency. In the federal court we are attempting as best we  
25 can to protect the health and safety of everyone including

1     you.

2             For example, if you were brought into the courtroom  
3     with other people, you could be in close quarters possibly  
4     exposing you to the virus. We're trying to protect everyone  
5     from getting sick and passing the virus to other people while  
6     at the same time we're trying to move forward and conduct  
7     proceedings like this in the safest possible way for everyone  
8     involved.

9             To minimize the health risks, among other things,  
10     we're giving defendants the option of appearing via video  
11     link. At this point it is voluntary. You do not have to  
12     appear by video. So I am going to go through some questions  
13     with you to make sure that you understand your right to  
14     appear in person and to make sure that you understand you can  
15     waive that right.

16             Do you understand everything I've said up to this  
17     point?

18             THE DEFENDANT: I do.

19             THE COURT: And do you understand that you have the  
20     right to be physically present in open court for this  
21     hearing?

22             THE DEFENDANT: I do.

23             THE COURT: And have you discussed the fact that  
24     you're appearing via video link with your attorneys?

25             THE DEFENDANT: I have.

1 THE COURT: And do you understand that you have the  
2 right to consult with your attorneys privately at any time  
3 during this hearing? All you have to do is let me know and I  
4 will arrange for it. Do you understand?

5 THE DEFENDANT: I do.

6 THE COURT: And do you understand that the  
7 courtroom is not closed. This is still a public proceeding.  
8 So even though you are appearing by video, your family  
9 members and other supporters have the right to attend this  
10 hearing electronically. Do you understand?

11 THE DEFENDANT: I do.

12 THE COURT: And do you agree to waive your right to  
13 appear in person today and instead agree to appear by video?

14 THE DEFENDANT: I do.

15 THE COURT: Mr. Saval, have you discussed or your  
16 colleagues discussed the waiver with your client, and is  
17 there any reason why I should not accept his waiver?

18 MR. SAVAL: Your Honor, I am going to defer to my  
19 partners, Mr. McGovern and/or Mr. Menchel to respond to Your  
20 Honor.

21 MR. MENCHEL: Is that okay, Your Honor?

22 THE COURT: That's fine.

23 MR. MENCHEL: We have discussed it with Mr.  
24 Gentile. He understands, and he's waiving that right.

25 THE COURT: Thank you. I find that the defendant

1 has knowingly and voluntarily waived his right to appear at  
2 this hearing in person. I find that requiring the defendant  
3 to be present would jeopardize the public health and safety  
4 of those who would be present with the defendant during the  
5 court proceeding.

6 I further find that additional delay would  
7 jeopardize the interests of justice because it is necessary  
8 to conduct this hearing promptly to protect the  
9 constitutional and legal rights of the defendant. I accept  
10 the defendant's waiver, and we will now proceed with the  
11 defendant's initial appearance.

12 We're here, Mr. Gentile, because you have been  
13 charged in a federal criminal indictment. At this hearing I  
14 will advise you of your constitutional and legal rights. I  
15 will tell you about the charges against you and the penalties  
16 that this Court invoke if you are found guilty.

17 You have been charged in an indictment in the  
18 Eastern District of New York with the following offenses:  
19 Conspiracy to commit securities fraud in violation of Title  
20 18 United States Code Section 371; conspiracy to commit wire  
21 fraud in violation of Title 18 United States Code Section  
22 1349; securities fraud in violation of Title 15 United States  
23 Code Sections 78j(b), 78ff; and Title 18 United States Code  
24 Section 2; and wire fraud in violation of Title 18 United  
25 States Code Section 1343.



1 Ms. Beck, what are the maximum penalties?

2 MS. BECK: Yes, Your Honor. For Count 1,  
3 conspiracy to commit securities fraud, the maximum penalties  
4 are five years in prison, a fine of \$250,000, up to three  
5 years of supervised release, and a mandatory \$100 special  
6 assessment. For Count 2, conspiracy to commit wire fraud,  
7 the maximum personalities are 20 years in prison, a fine of  
8 \$250,000, up to three years of supervised release, and a \$100  
9 special assessment. For Count 3, securities fraud, the  
10 maximum penalties are 20 years in prison, a \$5 million fine,  
11 and up to three years of supervised release, and a \$100  
12 mandatory special assessment.

13 For each of Counts 4 and 5, which allege wire  
14 fraud, the maximum penalties are 20 years in prison, a fine  
15 of \$250,000, up to three years of supervised release, and a  
16 mandatory \$100 special assessment on each count. The  
17 defendant also faces a criminal forfeiture allegation.

18 THE COURT: Thank you. Mr. Gentile, I'll tell you  
19 about your right to counsel and I'll consider conditions of  
20 release pending further court proceedings. That is, whether  
21 or not you should be detained or what amount of bail should  
22 be set. This is not a trial, and you will not be called upon  
23 to answer the charges at this time. If at any time I say  
24 something you don't understand, please interrupt me and say  
25 so. Is that clear?

1 THE DEFENDANT: Yes.

2 THE COURT: As a first step in this hearing I'm  
3 going to tell you about your constitutional rights. You have  
4 the right under the Constitution of the United States to  
5 remain silent. Any statement made by you may be used against  
6 you in court, and you have the right not to have your own  
7 words used against you. You may consult with an attorney  
8 prior to any questioning, and you may have the attorney  
9 present during questioning. Counsel will be appointed  
10 without charge if you cannot afford counsel.

11 If you choose to make a statement or to answer  
12 questions without the assistance of counsel, you may stop  
13 answering at any time. This right means you do not have to  
14 answer any questions put to you by law enforcement agents or  
15 by the Assistant United States Attorney Ms. Beck. I want to  
16 make it clear that you're not prohibited from making  
17 statements, but that any statement you do make may be used  
18 against you. You're not required to make a statement at this  
19 initial appearance, and any statement you to make may be used  
20 against you.

21 Finally, if I ask you any questions during this  
22 hearing or any future hearing, which you think might  
23 incriminate you, you have the right not to answer. Do you  
24 understand everything I've said about your right to remain  
25 silent?

1 THE DEFENDANT: I do.

2 THE COURT: As I said earlier, you have the right  
3 to retain counsel, to be represented by counsel, and to have  
4 the assistance of counsel at every critical stage of these  
5 proceedings. You have the right to an attorney at this  
6 initial appearance, during any questioning, at any line-up,  
7 and at all proceedings in court. You also have the right to  
8 have this Court assign counsel if you cannot afford counsel  
9 or you cannot obtain counsel. Can you afford a lawyer?

10 THE DEFENDANT: I can.

11 THE COURT: And do you wish to have counsel of  
12 record?

13 THE DEFENDANT: I do.

14 THE COURT: In any event, if at some later date  
15 that you can no longer afford counsel, you have the right to  
16 have this Court assign counsel after the completion of a  
17 financial affidavit. The information in the financial  
18 affidavit assists the Court in determining whether or not  
19 you're financially unable and therefore entitled to the  
20 appointment of counsel.

21 I remind you the affidavit is filed under the pains  
22 and penalties of perjury, which means that if the information  
23 in the affidavit is false, you could be prosecuted for  
24 perjury and if convicted be subject to a fine of up to  
25 \$250,000 and/or five years in jail. That's only in the event

1     you seek an appointed lawyer.

2             I am going to ask you some questions now for the  
3     sole purpose of bail. I will ask that you be sworn. None of  
4     these questions is designed to incriminate you. If you do  
5     not wish to answer, you do not have to. And you may confer  
6     with your counsel at any time before you answer the  
7     questions.

8             Mr. Putnam, would you please swear the defendant.

9             THE CLERK: Mr. Gentile, if you could raise your  
10    right hand.

11            (DANIEL GENTILE duly sworn by the Deputy Clerk.)

12            THE COURT: Please state your name for the record.

13            THE DEFENDANT: David C. Gentile.

14            THE COURT: And your address.

15            THE DEFENDANT: 1331 Cleveland Street, Apartment  
16    2503, Clearwater, Florida. ZIP Code is 33755.

17            THE COURT: Thank you. Ms. Beck, are there any  
18    Title III's here?

19            MS. BECK: No, Your Honor.

20            THE COURT: All right. Your telephone number.

21            THE DEFENDANT: My cell phone number is area code  
22    516-641-9461.

23            THE COURT: And your age.

24            THE DEFENDANT: 54.

25            THE COURT: And the year you were born.

1 THE DEFENDANT: 1966.

2 THE COURT: And where were you born?

3 THE DEFENDANT: In New York.

4 THE COURT: The last four digits of your Social  
5 Security number.

6 THE DEFENDANT: 0371.

7 THE COURT: And where did you go to school and how  
8 far did you go in school?

9 THE DEFENDANT: I got a bachelors degree in  
10 accounting at Queens College.

11 THE COURT: And are you married or single?

12 THE DEFENDANT: I'm married.

13 THE COURT: And do you have any children?

14 THE DEFENDANT: Four children.

15 THE COURT: The age range.

16 THE DEFENDANT: 21, 20, 17, and 15.

17 THE COURT: And how are you employed?

18 THE DEFENDANT: I'm employed by a company I own.

19 THE COURT: Do you have a passport?

20 THE DEFENDANT: I do.

21 THE COURT: A U.S. passport and only one passport?

22 THE DEFENDANT: One. Yeah, I have one U.S.  
23 passport, one active passport.

24 THE COURT: And do you have any firearms?

25 THE DEFENDANT: Yes.

1 THE COURT: And have you ever been arrested before?

2 THE DEFENDANT: No. I have not been arrested.

3 THE COURT: Thank you. Ms. Beck, what's the  
4 government recommending?

5 MS. BECK: Your Honor, the government recommends  
6 that the defendant be released with standard conditions in  
7 addition to a \$500,000 unsecured bond with his wife acting as  
8 surety.

9 THE COURT: Well, I don't have the wife available.  
10 Do I? Is she on the Zoom?

11 MR. MENCHEL: I don't believe so, Your Honor.

12 THE CLERK: Mr. Gentile, a number ending in 0209,  
13 could that be your wife?

14 THE DEFENDANT: No. 6113 would be the last.

15 THE CLERK: I don't see her.

16 THE COURT: I will set it at the 500. When he gets  
17 to the Eastern District of New York, if you wish to have the  
18 wife made the surety, you can proceed there.

19 MR. MENCHEL: Yes.

20 THE COURT: All right. Ms. Beck, you'll convey  
21 that to the Assistant United States Attorney in the Eastern  
22 District of New York?

23 MS. BECK: Yes, Your Honor.

24 THE COURT: All right. Mr. Saval, do you want to  
25 be heard on the conditions?

1 MR. SAVAL: Your Honor, once again, if Your Honor  
2 permits, I'll defer to my partners Mr. Menchel, Mr. McGovern.

3 THE COURT: Fine.

4 MR. MENCHEL: Your Honor, this is Matthew Menchel.  
5 We've agreed to those conditions, Your Honor. They're  
6 acceptable. Thank you.

7 THE COURT: All right. Mr. Gentile, I'm going to  
8 set bail in the amount of a \$500,000 unsecured bond. An  
9 unsecured bond means you do not have to post any money today.  
10 If you should default or fail to appear for any court  
11 appearance that you're required to attend, you could forfeit  
12 the whole amount of the bond.

13 I am going to impose the following conditions:  
14 That you continue to reside at the residence in Florida and  
15 not move without the permission of pretrial services. You  
16 are to report to probation and pretrial services as directed.  
17 You are to avoid all contact directly or indirectly with any  
18 person who may be a victim or potential witness in the  
19 investigation of this case but not limited to co-defendants  
20 unless in the presence of counsel.

21 You are to report any contact with law enforcement  
22 within 24 hours. You are refrained from the possession of  
23 firearms, ammunition, or other destructive devices. You will  
24 have 72 hours. I would say that would be to the close of  
25 business on shall we make it Tuesday? Mr. Menchel, does that

1 give him adequate time?

2 MR. MENCHEL: That's fine, Your Honor. Thank you.

3 THE COURT: All right. So surrender those firearms  
4 either to law enforcement or to a transferee and document it  
5 to pretrial services. You are to surrender your United  
6 States passport, and you are not to apply for a new passport  
7 or any other travel document, and your travel is restricted  
8 to the Continental United States.

9 Probation, anything else you wish to add?

10 THE PROBATION OFFICER: No, Your Honor. I'm still  
11 awaiting reporting instructions from the District of Florida.  
12 But when I have them, I'll contact the defendant with those.

13 THE COURT: All right. So you'll be reporting to  
14 pretrial services.

15 MR. MENCHEL: May I inquire of Mr. Gentile about  
16 one question pertaining to the 72 hours? Are you currently  
17 in Florida with your wife or in New York?

18 THE DEFENDANT: I'm in Massachusetts.

19 THE COURT: He's in Boston.

20 MR. MENCHEL: Are you going back to New York or  
21 Florida?

22 THE DEFENDANT: I was wanting to go to Florida.

23 MR. MENCHEL: So you can get the firearms out of  
24 there by Tuesday, right?

25 THE DEFENDANT: As long as I can go to Florida,



1       yes.

2               THE COURT: Is there a firearm in another residence  
3 as well?

4               THE DEFENDANT: In New York, Your Honor.

5               THE COURT: Well, I think I'll give you until the  
6 close of business on Wednesday to see if the firearms in both  
7 locations can be resolved. If you have a problem with that,  
8 just come back to either probation or the Court.

9               MR. MENCHEL: Thank you, Your Honor.

10              THE COURT: I remind you that violation of any of  
11 the foregoing conditions of release may result in the  
12 immediate issuance of a warrant for your arrest, a revocation  
13 of release, and an order of detention as provided for under  
14 18 United States Code Section 3148 and prosecution for  
15 contempt as provided for in 18 United States Code Section  
16 401. This could result in the possible term of imprisonment  
17 and/or a fine.

18              Now, there are some statutory conditions of bail  
19 that I have to tell you about. If you are arrested while on  
20 release, you are to notify pretrial services within 24 hours.  
21 While you are on release, you are prohibited from committing  
22 a federal, state, or local crime. If you fail to appear  
23 before the Court as required by the conditions of release, in  
24 other words, if you're found guilty of bail jumping, you  
25 could be assessed a fine of up to \$250,000 and/or five years

1 in jail. Any term of imprisonment for the bail jumping would  
2 be a consecutive sentence to the sentence of imprisonment of  
3 the underlying offense. In addition a failure to appear  
4 would result in the forfeiture of the bail posted. That's  
5 the \$500,000 unsecured loan.

6 And I remind you once again if you violate any  
7 condition of release that I have set today, I can immediately  
8 issue a warrant for your arrest and can under some  
9 circumstances revoke the bail and detain you and commence a  
10 prosecution for contempt which could result in a possible  
11 term of imprisonment and/or fine. If you are convicted of an  
12 offense while you are on release, you may receive a term of  
13 imprisonment of not less than two years and not more than ten  
14 years if it's a felony and a term of not less than 90 days  
15 and not more than one year if it's a misdemeanor. The term  
16 of imprisonment shall be consecutive and must be imposed in  
17 addition to the sentence received for the offense itself.

18 There are four other statutes that I'm going to  
19 tell you about. These are particularly important. I ask  
20 that you listen carefully and to review them with your  
21 counsel. Under Section 1503, it is a federal felony  
22 punishable by up to five years and a \$25,000 fine to try to  
23 influence or intimidate any juror, court officer, or witness  
24 or to in any way impede or obstruct the administration of  
25 justice.

1 Under Section 1510 it is a federal felony  
2 punishable by up to five years in jail and a \$250,000 bond to  
3 obstruct criminal investigations by endeavoring by means of  
4 bribery to obstruct, delay, or prevent the communication of  
5 information relating to the violation of any federal criminal  
6 statute by any person criminal during a criminal  
7 investigation.

8 Under Section 1512 it is a federal felony by up to  
9 ten years imprisonment and a \$250,000 fine to tamper with a  
10 victim, a witness, or informant. And finally, under Section  
11 1513, it is a federal felony punishable by up to ten years in  
12 jail and a \$250,000 fine to retaliate against a victim or a  
13 witness by causing bodily injury or property damage or even  
14 threaten or attempting to do so.

15 If I find there's probable cause to believe that  
16 you have committed any one of these offenses, I can issue a  
17 warrant for your arrest. Do you understand everything I've  
18 said here today?

19 THE DEFENDANT: I do.

20 THE COURT: All right. At this time I would like  
21 to read into the record a statement pursuant to the Due  
22 Process Protections Act. Pursuant to the Due Process  
23 Protections Act, Public Law 116-182, 134 STAT 894  
24 (October 21, 2020), and Rule 50(f) of the federal Rules of  
25 Criminal Procedure, this Court issues the following order:

1 The United States is reminded of its obligation to disclose  
2 in a timely manner all exculpatory evidence to the defendant.  
3 That is, all evidence that is favorable to the defendant or  
4 tends to cast doubt on the United States' case as required by  
5 *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny.

6 Specific categories of exculpatory evidence that  
7 must be provided to the defense are set forth in local rule  
8 116.2. The failure to comply with this order may result in  
9 consequences including but not limited to the reversal of any  
10 conviction, exclusion of evidence, adverse jury instructions,  
11 dismissal of charges, contempt proceedings, disciplinary  
12 action and/or sanctions by the Court.

13 Anything else from the government? Ms. Beck?

14 MS. BECK: No. Thank you, Your Honor.

15 THE COURT: All right. From defense counsel?

16 MR. MENCHEL: No. Thank you, Your Honor.

17 THE COURT: All right. In the interim to all,  
18 please stay safe and stay well. And the bail papers will be  
19 coming along shortly. Hearing nothing else, we stand in  
20 recess.

21 (Court recessed at 4:51 p.m.)  
22  
23  
24  
25

-----

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

/s/ Joan M. Daly February 9, 2021

Date